

ACKNOWLEDGMENTS

These guidelines originally were developed by a team of criminal investigators from the following Offices of the Inspector General: Department of Education, Department of Transportation, and the Environmental Protection Agency. The guidelines have been revised by a team of investigative managers from the following Offices of the Inspector General:

- Department of Defense
- Environmental Protection Agency
- Federal Trade Commission
- General Services Administration
- Department of Health and Human Services
- National Aeronautics and Space Administration
- National Credit Union Administration
- National Labor Relations Board
- Office of Personnel Management
- Small Business Administration
- Treasury Inspector General for Tax Administration
- Tennessee Valley Authority
- U.S. Postal Service

The following references were reviewed during the development of this document:

1. The Inspector General Act of 1978, as amended.
2. The *Quality Standards for Investigations*, issued in September 1997 by the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE).
3. "Investigative Peer Review" (January 1997) issued by the Inspector General Criminal Investigator Academy.
4. The Memorandum of Understanding between the Offices of Inspector General, the Criminal Division of the Department of Justice, and the Federal Bureau of Investigation.
5. "Quality Assurance Review Guide for Investigations" (July 1995) issued by the Department of Agriculture Office of Inspector General.
6. "Guide for Conducting External Quality Control Reviews of the Audit Operation of Offices of Inspector General", (February, 2002), issued by the PCIE Audit Committee.

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PREFACE

This document includes standards and guidance for conducting external quality assessment reviews of the investigative operations of Offices of Inspector General (OIG). It was developed by the Investigations Committee of the President's Council on Integrity and Efficiency (PCIE) to establish an external review process to:

1. Ensure that adequate internal safeguards and management procedures exist within OIGs who exercise blanket deputation authority pursuant to a Memorandum of Understanding with the Department of Justice and the Federal Bureau of Investigation.
2. Ensure general and qualitative standards adopted by OIGs comply with the requirements of the *Quality Standards for Investigations* adopted by the PCIE/ECIE.

This Guide may be adapted for internal reviews within the PCIE and ECIE communities. While the Guide is designed for use in OIGs that have personnel in the 1811 job series, it also provides guidelines for reviewing investigative processes and records maintenance in any OIG investigative operation.

The guidance is advisory and is not intended to supplant the review team's professional judgment about the approaches to take or the specific procedures to be performed.

GENERAL CONSIDERATIONS

1. **Applicability.** This guide applies to qualitative assessment reviews (QAR) for investigative operations of the OIGs. The following questionnaires and checklists were developed to assist in the review of an organization.
 - Appendix A is a profile sheet of administrative data about the organization being reviewed.
 - Appendix B is a questionnaire to assess whether adequate internal safeguards and management procedures exist within those Offices of Inspector General that have a blanket deputation agreement and a Memorandum of Understanding with the DOJ and the FBI.
 - Appendix C is a questionnaire to assess the level of conformity with the general and qualitative standards outlined in the PCIE/ECIE *Quality Standards for Investigations*.
 - Appendix D is a questionnaire used when reviewing sampled investigative case files to test the degree of compliance with the MOU or the Quality Standards mentioned above.
 - Appendix E is the Memorandum of Understanding between the OIG, the Department of Justice, and the Federal Bureau of Investigation.
2. **Background.** This guide is based, in part, on the September, 1997 revision of the *Quality Standards for Investigations*, adopted by the PCIE and ECIE. The Standards contain three general standards and four qualitative standards. The general standards (Qualifications, Independence, and Due Professional Care) apply to investigators and the organizational environment in which they perform. The qualitative standards (Planning, Execution, Reporting, and Information Management) apply to the management functions and processes that investigators perform.
3. **Objectives of the Investigative Qualitative Assessment Review Program.** The QAR program is intended to be positive and constructive rather than negative or punitive. The overall objective of a QAR is to foster professionalism and quality investigations. It provides an independent assessment of the effectiveness of an investigative program in providing reasonable assurances that applicable investigative standards and policies are being followed.

4. **Management and Oversight of QAR Program.** The PCIE Investigations Committee has responsibility for overall management and oversight of the QAR process. This committee will resolve all issues that cannot be mutually agreed upon by the QAR team and any office being reviewed.

The Chairperson of the PCIE Investigations Committee is responsible for arranging a matching process to ensure that an OIG is subject to a QAR once every three years. The selection of inspection partners should be made through a random process such as a lottery or a rotating roster of participants. The QAR schedule should be distributed on an annual or biennial basis to allow appropriate lead-time for OIGs to plan their participation.

The function of the QAR is considered inherently governmental. The process should be handled within the Inspector General (IG) community and not contracted externally.

5. **Review Team Staffing and Qualifications.** Conducting a QAR review requires considerable professional judgment and leadership. The QAR team will consist of a team leader with appropriate investigative background and experience. It is recommended (but not mandated) that the team leader be at or above the GS-15 grade level (or equivalent). The rest of the team will consist of OIG investigators from one or more OIGs.

The team size and composition may vary depending on a number of factors including, but not limited to: the size and geographic dispersion of the OIG being reviewed; changes in organizational structure, control, and leadership; and the number, type, and importance of reports issued at each field location or satellite office.

If the organization under review handles classified information, members of the assessment team must have the appropriate level of security clearance(s) to permit a complete QAR without undue impact on the quality of the review.

6. **Independence.** The review team members should meet the independence standards in the *Quality Standards for Investigations*. To avoid any appearance of bias, care should be taken to ensure that the QAR team members do not have personal or professional relationships with the officials in the OIG being reviewed. Specifically, the QAR team members should not be former employees of the organization. The OIG managing a QAR cannot review an office that conducted its most recent QAR.

7. **Confidentiality and Security.** It is possible that the review team may not be granted access to material because of legal restrictions. If this situation occurs, the review team should review *the system* related to the maintenance and protection of information to determine the adequacy of established procedures. Discussion among review team members of any information obtained during an external review is limited to a need-to-know basis.

All matters discussed, materials assembled, documents prepared, and reports generated through an external QAR, should, at a minimum, be treated as proprietary information and maintained appropriately. To the extent possible, specific case details including names and other personally identifying information should not be recorded by the QAR team members. The team leader must ensure that the members of the team comply with all requirements regarding handling of access-restricted materials, such as safeguarding classified material, Internal Revenue Service tax information, and protection of grand jury material and information.

8. **Due Professional Care.** The review team should exercise due professional care and sound professional judgment in planning, performing, and reporting the results of the review.
9. **Self-Inspection Programs.** Many OIGs have a periodic self-inspection program. The IG being reviewed may choose to provide a complete self-inspection report or portions of the self-inspection findings to the QAR team. The self-inspection report(s) and other findings may be reviewed by the QAR team to gather information about the OIG's compliance with applicable policies, procedures, and standards.

While the use of self-inspection results as evidence can reduce the burden on the QAR team, it is not intended that the QAR team's final opinion on the adequacy of an investigative program be based solely on evidence provided in a self-inspection. Depending on the circumstances, the QAR team may find it more efficient not to review the self-inspection reports and go directly to reviewing available policies, procedures, and other available information. This may be the case when (1) the design of the self-inspection program is unlikely to produce reports that are useful to the QAR team, or (2) the investigative operation is small enough that a number of policies, procedures or available files and records can be reviewed in the time allotted to obtain the needed support for the required assurances.

PLANNING AND PERFORMING THE INVESTIGATIVE QUALITATIVE ASSESSMENT REVIEW

At a minimum, the objective of a qualitative assessment review is to determine whether the OIG's internal safeguards and management procedures are in place and operating effectively to provide reasonable assurance that established policies, procedures, and applicable investigative standards are being followed. The QAR team will analyze existing policies and procedures, conduct interviews with selected management officials and the investigative staff, and sample closed investigative files, as warranted.

The scope of the review may be limited or expanded based on the agreement of the reviewed organization and the QAR team leader. Completion of the QAR process using Appendix B, Appendix C, and Appendix D constitutes the requirements for a complete review. Normally, the QAR review will be conducted at the headquarters elements but may be expanded to include field components for OIGs who have field or satellite locations.

1. **Scope.** Appendix A – This section is an organizational profile of the office being reviewed.

Appendix B – Where applicable, this section of the QAR meets the requirement of applicable OIG statutory law enforcement authority and the provisions of the MOU with the DOJ and the FBI. The scope of a review using Appendix B cannot be limited. However, an OIG that received statutory law enforcement powers under other legislation may be reviewed in accordance with its criteria.

Appendix C – This portion of the QAR process supplements Appendix B for conducting a complete QAR. Appendix C tests an office's general conformity with the *Quality Standards for Investigations* adopted by the PCIE and ECIE in September 1997.

Appendix D – This portion of the QAR is a checklist for sampling investigative files and their compliance with applicable law enforcement standards, MOU provisions, and/or the Quality Standards for Investigations.

2. **Approach.** Review team members should be knowledgeable of all facets of an investigation and use prudent judgment when evaluating compliance with the Inspector General Act, *Quality Standards for Investigations*, applicable statutory law enforcement provisions, the MOU provisions with DOJ and the FBI, and OIG policies and procedures.
3. **Pre-Site Review Steps.** The organization being reviewed should be asked to complete Appendix A, Appendix B and Appendix C, citing references to pertinent policies and procedures, and return the appendices to the team for analysis before the site visit begins. The review team should also consider obtaining relevant policy and

procedural documentation to save time on-site. Examples of references and other documentation that should be available for the review team to examine when the on-site review is conducted includes:

- a. **Manuals, Policy Statements, and Handbooks** – pertinent documents describing the operational policies and procedures.
- b. **Semiannual Reports to Congress** – at least the four most recent semiannual reports to Congress. (The semiannual reports will provide information regarding the nature and volume of investigative work being performed. The reports may also assist the review team in identifying closed case files to be reviewed.)
- c. **Self-inspection report(s)** – a copy or appropriate portions of the self-inspection or evaluation reports conducted within the past two years or the most recent report.
- d. **Closed Case Inventory** – a listing of the cases closed within the last fiscal year. (This listing should include information such as the case identifiers; dates the investigations were opened and closed; case types, e.g., employee integrity or procurement fraud; referral dates; disposition; types of action taken; hours charged; and grade levels of the investigators.)

All requests for information should be submitted to the OIG being reviewed 60 – 90 days before commencing the on-site review.

4. **Working Environment.** Before beginning the on-site work, the QAR team leader should arrange with the reviewed agency to have adequate workspace for the review team. The Assistant Inspector General for Investigations (AIGI), or a designee, may facilitate the coordination of logistics for the QAR team and obtaining requested materials.
5. **Review Schedule.** The QAR will be scheduled by mutual agreement between the review team and the agency to be reviewed. The size of the organization or level of detail of the review may impact the time required to complete a review.

The goal of the review team should be to complete a qualitative assessment in as little time as may be required. To minimize the time that elapses after a QAR is initiated, the following timeframes are provided as general guidance:

Action Item	Recommended Timeframe
Appointment of QAR team leader and selection of review team	90 days before a site review
Conduct pre-site review and request necessary information from office being reviewed	60 - 90 days before the on-site review begins
Conduct on-site review and exit briefing	5 – 10 days on site
Completion of the draft QAR report and submission of the draft report to the reviewed office for comment	30 days after the conclusion of the on-site review
Allow offices being reviewed to comment on the draft report	15 working days

6. **Entrance Briefing.** An entrance briefing will be conducted with the Inspector General in charge of the office being reviewed. The senior investigations field office staff from each office reviewed should attend the entrance briefing because it provides an opportunity to outline the objectives of the QAR; review the methodology, and express any areas of management concern.
7. **Sample Selection.** It may be prohibitive in terms of time and resources for the review team to examine each field location and the entire population of OIG records to answer specific items in the appendices.

The selection of field locations (satellite offices) included in the review involves the exercise of considerable professional judgment. The review team should strive to include a sufficient number of offices that are representative of the OIG with greater weight given to locations with a lower level of centralized control. Additionally, if prior internal inspections show that one or more locations had problems in the past, the team may want to review a sample of such locations to see if corrective actions have been implemented and, if so, if they were effective.

Other factors to be considered in selecting the field locations to be reviewed include the following:

- Number, size, and geographic dispersion of field offices
- Changes in organizational structure, control, and leadership
- Number, type, and importance of reports issued by location
- Degree of centralized control over field locations
- Results of prior internal inspection reports or other external reviews
- The need to verify the results of internal inspection reports

Due to the sensitivity of many open investigations, it is recommended that the review team sample closed cases (see Appendix D). In determining the number of closed cases in the sample, it should be kept in mind that the objective of the QAR is to obtain evidence regarding the performance of the OIG overall, not each individual office. Therefore, team leaders should not feel that they need to select a certain number of reports at each location. Rather, the sample should be representative of the major types of investigations performed by the OIG staff at the location.

The review team should apply a no-advance notice policy, where legally possible, in advising the OIG of the individual investigative files selected for review during the on-site visit.

Sampling may also be used to perform some of the following review steps. For example:

- a. A sample from the staff of criminal investigators may be selected to assure that they meet the basic qualifications for investigators.
 - b. A sample of training profiles or the equivalent may be selected to assure that agents maintain their investigative and law enforcement skills.
8. **Exit Conference.** The review team should prepare and present the preliminary findings of the review to the Inspector General and other members of the senior management team at the conclusion of the on-site visitation.

REPORTING REVIEW RESULTS

1. **General.** Review results will be reported in: (1) a cover letter to the Inspector General of the reviewed organization; (2) an enclosure with any reportable findings; and (3) if applicable, a separate letter containing suggested improvements. Generally, the cover letter will contain the review team's opinion on whether the OIG has adequate internal safeguards and management procedures to assure compliance with (a) applicable statutory law enforcement standards and/or the blanket deputation Memorandum of Understanding (if applicable) and (b) the PCIE/ECIE *Quality Standards for Investigations*.
2. **Views of Responsible Officials.** QAR findings should be both complete and fair. Exaggeration of a finding's significance or the extent of noncompliance found should be avoided. One way to assure the objectiveness, accuracy, and completeness of the findings is to obtain the views of responsible officials. When apparent deficiencies are found during the review, the team must discuss the situation with the appropriate responsible official(s) designated by the reviewed OIG. All preliminary draft findings must be presented during the review to the official(s) designated by the reviewed OIG. This action will help to avoid any misunderstandings and help assure that all facts are considered before a formal draft report is prepared.

The OIG being reviewed must be afforded an opportunity to comment on the formal draft report prior to the issuance of a final report. All material facts provided by the reviewed organization should be considered by the review team to determine whether the initial comments included in the draft report should be revised. A full explanation should be included in the final report as to what actions were taken in response to the reviewed OIG's official comments to the draft report.

3. **Reportable Findings.** A reportable finding is defined as a significant systemic failure to conform to applicable professional standards that materially affect a significant number of completed investigations. The decision to document a reportable finding should be supported by clear and convincing evidence of systematic material noncompliance with standards. However, if deficiencies were found in a limited number of case files or at one of several sites reviewed, they would not be considered systematic. The report should so indicate so as not to imply that the deficiencies were organization-wide and systematic. All reportable findings will be included in an enclosure to the cover letter.
4. **Suggested Improvements.** Isolated instances of policy or procedural nonconformity should be reported in a separate letter of suggested improvements. This letter may also be prepared when the review team finds few deficiencies in the work performed by the OIG, but the design of the OIG's internal safeguards and procedures needs to be improved. Any reference to this letter of suggested improvements should indicate that the matters discussed therein do not affect the overall opinion of the adequacy of internal safeguards and management procedures.

In keeping with the constructive nature of the QAR program, the team should report any particularly noteworthy accomplishments found during the review to the PCIE Investigations Committee for dissemination. Examples of such items would be particularly creative and effective investigative procedures or particularly efficient and effective management procedures. Other OIGs may benefit from this information. This may be done in the cover letter or in an informal letter from the team leader to the reviewed organization.

5. **Dispute Resolution.** The Inspector General of the reviewed organization may refer a significant dispute about a draft finding to the PCIE Investigations Committee for review and resolution if the IG cannot resolve the matter with the QAR team. The OIG should provide the Investigations Committee: (a) a copy of the draft report and enclosures, and (b) a written summary of the material facts regarding the disagreement.

The Investigations Committee should work with the OIG being reviewed and the QAR team leader to resolve the dispute. Ultimately, the Investigations Committee must decide to: (a) accept the QAR team's initial findings; (b) request the QAR review team conduct additional work to facilitate the resolution of the disagreement; or (c) form a new QAR team tasked with conducting further review of the disputed findings.

6. **Cover Letter Content.** A final report will consist of a cover letter (with enclosures) addressed to the Inspector General of the reviewed organization. At a minimum, the letter report should contain the following information:
 - a. Scope of the review, including any limitations thereon, and any expansion of the review beyond the basic review guide.
 - b. Description of the review methodology, including a listing, by case number, of each investigative file reviewed, and the field offices visited.
 - c. The review team's opinion on whether:
 - Adequate internal safeguards and management procedures exist to assure compliance with the applicable statutory law enforcement standards and/or the blanket deputation MOU (APPENDIX B), if applicable.
 - OIG policies and procedures were designed in compliance with the PCIE/ECIE Quality Standards (APPENDIX C.).
 - d. If applicable, references to the reportable findings enclosed with the letter.
 - e. An explanation of actions taken in response to the reviewed OIG's official comments to the draft report.

7. **Final Reports.** The final QAR report will be issued to the Inspector General of the reviewed office and to the Chairperson of the PCIE Investigations Committee. The IG responsible for conducting the QAR will also submit a summary of the results to the U. S. Department of Justice in accordance with the memorandum of understanding that establishes the QAR process. (This requirement applies only to OIGs that are covered by the MOU). The letter to the DOJ will address the degree of compliance of the inspected entity; i.e., full compliance, substantial compliance, or noncompliance; and include remedial action initiated by the reviewed organization, if appropriate.
8. **Files Maintenance.** After issuing the final report, all files, records, notes and memoranda or copies obtained from the office reviewed will be returned. The results of the QAR (the report, letter to the Attorney General, and all other materials generated as a result of the QAR) will remain in the possession of the OIG who conducted the QAR.

The OIG conducting the QAR will institute a record retention policy in accordance with guidelines established by the National Archive and Records Administration. All requests for access to the QAR files, to include Freedom of Information (FOIA) and Privacy Act (PA) requests, must be processed in consultation with the Inspector General of the reviewed organization. No QAR files shall be released pursuant to a FOIA or PA request without the permission of the reviewed OIG to ensure compliance with applicable law.

APPENDIX A

INVESTIGATIVE QUALITATIVE ASSESSMENT REVIEW ORGANIZATIONAL PROFILE

OIG REVIEWED:

_____ Name	_____ Street Address of Headquarters Office
	_____ City and State

KEY PERSONNEL & TELEPHONE NUMBERS:

_____ Inspector General's Name	_____ Telephone No.
_____ AIGI's Name	_____ Telephone No.
_____ Deputy AIGI's Name	_____ Telephone No.
_____ Facilitator's Name (If designated)	_____ Telephone No.

ORGANIZATION OF INVESTIGATIVE OFFICE ONLY:

Desk Officer(s) (DOs)? _____
State number

Number of managers/supervisors other than AIGI, Deputy, DOs? _____
State Number

Number of attorneys/staff other than Special Agents conducting
Investigations _____
State Number

Number of special agents other than managers/supervisors, DOs? _____
State Number

Organizational chart attached? _____
Yes or No

APPENDIX A

STAFFING OF INVESTIGATIVE OFFICE ONLY:

Other Investigative Office staff members (List by position classification and number of personnel)?

Position Classification	Grade	Number of Personnel
GS-1811	5/7	
GS-1811	9	
GS-1811	11/12	
GS-1811	13	
GS-1811	14	
GS-1811	15	
GS-1811	SES	
TOTAL		

Person Completing Form

Telephone No.

Date of Completion

APPENDIX B

Questionnaire for Review of Statutory Law Enforcement or Blanket Deputation Implementation

PURPOSE. This section, Appendix B, assesses whether adequate internal safeguards and management procedures exist within those Offices of Inspector General which receive law enforcement powers under the Congressional legislation and/or blanket US Marshals Service deputation in accordance with the MOU with DOJ and the FBI.

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
A. <u>COMPLIANCE WITH OIG, DOJ, AND THE FBI MOU</u> This section concerns only those OIGs, which have entered into a memorandum of understanding (MOU) with the Department of Justice and the FBI concerning the blanket deputation of OIG special agents. All of the questions are based on the requirements set forth in the MOU. Consult the MOU for the exact language when evaluating compliance. 1. Are eligible Special Agents supervised by the AIGI? 2. Is the OIG reporting to DOJ the following information: a. Arrests? b. Searches?					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
c. Execution of restraining orders?					
d. Protection of witnesses?					
e. Dangerous surveillance of investigative subjects?					
f. Interviews under hazardous circumstances?					
g. Temporary custody of Federal prisoners?					
h. Support of undercover operations?					
i. Service of subpoenas under hazardous circumstances?					
j. Assisting in electronic surveillance?					
k. The Federal prosecutors assigned to investigations that resulted in arrests or searches?					
B. <u>GENERAL TRAINING REQUIREMENTS</u>					
1. Have all 1811s completed basic Criminal Investigator Course at Federal					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>Law Enforcement Training Center or an equivalent training course?</p> <p>2. Is the OIG providing periodic refresher training to its agents in the following areas?</p> <p>a. Trial process?</p> <p>b. Federal criminal and civil legal updates?</p> <p>c. Interviewing techniques and policy?</p> <p>d. Laws of arrest, search and seizure?</p> <p>e. Physical conditioning/ defensive tactics?</p>					
<p>C. <u>FIREARMS TRAINING AND QUALIFICATION REQUIREMENTS</u></p>					
<p>1. Is the OIG providing its deputized special agents periodic firearms training and recertification in accordance with DOJ or Department of Treasury standards?</p>					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
2. Has the OIG adopted the DOJ or Department of Treasury Deadly Force Policy? The current MOU, page five, last three lines, states that the OIG agrees to abide by the same deadly force policy as the FBI. 3. Are deputized agents successfully completing quarterly firearm qualifications?					
D. <u>ADHERENCE TO ATTORNEY GENERAL GUIDELINES</u> Are OIG special agents complying with the Attorney General's Guidelines and Memorandum on Procedures on the following:					
1. General Crimes? 2. Racketeering Enterprise? 3. Domestic Security? 4. Terrorism Investigations? 5. Lawful Warrantless Interceptions of Verbal					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
Communications?					
E. <u>OIG / FBI MUTUAL NOTIFICATION REQUIREMENT</u> 1. Unless the local FBI SAC and the local OIG SAC have made other arrangements, in areas of concurrent jurisdiction, does the OIG notify the FBI in writing within thirty calendar days of OIG investigations? 2. Does the FBI comply with the same requirement in notifying the local OIG SAC, as stated in question 9, above?					
F. <u>CONSULTATION WITH PROSECUTORS</u> Is the OIG consulting with Federal prosecutors at an early stage, as defined in the MOU?					
G. <u>SENSITIVE TECHNIQUES AND CIRCUMSTANCES REQUIRING JOINT INVESTIGATIONS</u> 1. Is the OIG following					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>the requirement that it must work with the FBI and/or another statutory law enforcement agency when it is involved with the following:</p> <p>a. Court ordered electronic surveillance?</p> <p>b. Undercover operations?</p> <p>c. Especially sensitive targets?</p> <p>d. Consensual monitoring of conversations in investigations:</p> <p>1) of public officials for bribery, conflict of interests, or extortion, relating to the performance of their official duties?</p> <p>2) in which the consenting or nonconsenting person is in the custody of the Bureau of Prisons or the United States Marshals Service?</p> <p>2. Is the OIG notifying the FBI prior to conducting a sensitive investigation with a Federal law enforcement agency other than the FBI?</p>					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>H. <u>USES OF INFORMANTS, SOURCES, AND COOPERATING WITNESSES THAT REQUIRE PROSECUTOR CONCURRENCE</u></p> <p>If informants, sources, or cooperating witnesses are used, is the OIG obtaining a Federal prosecutor's concurrence in the following situations:</p> <p>1. When an informant is authorized to participate in criminal activities?</p>					
<p>2. When an informant or cooperating witness is a person entitled to claim a Federally recognized legal privilege of confidentiality, such as an attorney, clergyman, or doctor?</p> <p>3. When aggregate payments to a source who could be a witness in a legal proceeding for services and /or expenses exceed \$25,000?</p> <p>4. When the use of any member of the news</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
media as a source is planned (in such a situation the prior written approval of the Federal prosecutor must be obtained)?					
<u>I. RELATIONS WITH THE NEWS MEDIA</u> 1. Is the OIG following DOJ guidelines concerning release of information relating to criminal and civil proceedings? 2. In the case of joint investigations, is the OIG coordinating its press release with the joint agency?					
<u>J. STAFF QUALIFICATIONS</u> This standard requires that individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the task required. 1. Knowledge, Skills, and Abilities - The Quality Standards state that all investigators once selected should possess the requisite knowledge, skills, and abilities summarized on page 3 of the standards booklet. a. Do all					

APPENDIX B

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>investigators possess the requisite knowledge, skills, and abilities?</p> <p>2. Entry-Level Training - The standards state (p. 4) that all investigators should successfully complete a formal basic training course.</p>					
<p>a. Have all investigators successfully completed a formal basic training course?</p> <p>3. Post-Basic Training - The standards state (p.4) that all investigators should remain current with the law and with agency policies, procedures, rules, and regulations. Post-basic training should be part of a systematic, progressive, plan to maintain the requisite knowledge, skills, and abilities.</p> <p>a. Does the organization have a plan to maintain investigators' knowledge, skills, and abilities?</p>					

APPENDIX B

Review Steps

<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>

APPENDIX C

Questionnaire for Review of Compliance with PCIE/ECIE *Quality Standards for Investigations*

PURPOSE. This review guide is based on the *Quality Standards for Investigations*, adopted by the PCIE and ECIE in September 1997. The Quality Standards contain three general standards (Qualifications, Independence, and Due Professional Care) and four qualitative standards (Planning, Execution, Reporting, and Information Management).

This Section, Appendix C, is applicable to all Offices of the Inspector General. It is used to review the level of conformity with the standards adopted in the PCIE/ECIE *Quality Standards for Investigations* publication. The results of the Appendix C quality assessment review will be communicated in writing to the appropriate Inspector General.

APPENDIX C

<u>Review Steps</u>		<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
A. <u>STAFF QUALIFICATIONS</u>						
This standard requires that individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the task required.						
1. Education/Experience – The standards state (p. 1) that it is desirable that all newly appointed investigators possess a degree from a four-year college. However, the standards state (p. 2) that, depending on the needs of the agency, allowances may be made to substitute experience for a college education.						
a. Do all newly						

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>appointed investigators possess a degree from a four-year college?</p> <p>b. Do those newly appointed investigators who lack a degree from a four-year college have appropriate substitute experience?</p> <p>2. Character - The standards state (p. 2) that a suitability determination should be made as to the investigator's character, reputation, trustworthiness, and overall fitness. A determination of suitability will be based on the results of a background investigation, including personal interviews, written inquiries and confirmations, record searches, and a review of the applicant's compliance with programs administered by the agency.</p> <p>a. Were background investigations conducted on all investigators?</p>					
<p>3. Physical Capabilities - The standards state (p. 2) that each investigative</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>organization should develop job-related physical requirements in accordance with current statutes, regulations, and agency policy to enable investigators to discharge their duties adequately, while promoting personal well-being.</p> <p>a. Has the organization developed physical requirements?</p> <p>4. Fitness Program - The standards state (p. 2) that some organizations may wish to establish a fitness program for its investigative staff.</p> <p>a. Has this agency determined whether it should establish a fitness program for its investigative staff?</p> <p>b. Has this agency established a fitness program for its investigative staff?</p>					
<p>5. Age – The standards state (p. 3) that consideration must be given to minimum and maximum age requirements for entry-level positions in accordance with applicable statutes and regulations.</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>a. Has the organization considered whether it should establish minimum and maximum age requirements for entry-level positions?</p> <p>b. Has the organization established minimum and maximum age requirements for entry-level positions?</p>					
<p>B. <u>DUE PROFESSIONAL CARE</u></p> <p>This general standard requires that due professional care be used in conducting investigations and in preparing related reports. The standard requires a constant effort to achieve professional performance. The standard does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.</p>					
<p>Does the organization have policies, procedures, and systems in place to assure that:</p> <p>1. Investigations are conducted in a diligent and complete manner, and reasonable steps are taken to ensure that all appropriate criminal, civil, contractual, or administrative remedies are considered?</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
2. Investigations are conducted in accordance with applicable laws, rules, regulations, DOJ guidelines, and with due respect for the rights and privacy of those involved?					
3. The methods and techniques used in each investigation are appropriate for the circumstances and objectives?					
4. Investigations are conducted in a fair and impartial manner and with the perseverance necessary to determine the facts?					
5. Evidence is gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve an issue?					
6. Does the organization have policies to assure that investigators are aware of generally accepted standards of conduct for government employees and procedures to address noncompliance?					
7. Does the organization have a drug testing policy for investigative personnel?					
8. Does the organization comply with the provisions of the Lautenberg Amendment (if applicable).					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
9. Does the organization have policies that require completion and reporting of investigations in a timely manner?					
10. Are the investigative report findings and accomplishments supported by adequate documentation in the case file?					
11. Does the organization have a policy dealing with union representation at subject and informational interviews?					
12. Does the organization have policies and procedures for receiving, identifying, storing, and preserving documentary and physical evidence?					
13. Does the organization have adequate procedures for maintaining the chain of custody for documentary and physical evidence?					
14. Are organizational policies and procedures for securing, storing, and disposing of federal grand jury information consistent with Rule 6(e) of the FRCP (where applicable)?					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
15. Do organizational policies and procedures require periodic inventory of accountable property such as credentials, specialized technical/monitoring equipment, handguns, specialized weapons and ammunition?					
<p>C. <u>PLANNING</u></p> <p>This qualitative standard provides that the investigative organization should establish organizational and case specific priorities and develop objectives to ensure that individual case tasks are performed efficiently and effectively.</p> <p>The guidelines state (p. 8) that organizations should prepare goal-oriented operational plans, that a basic, single-source planning document should present each organization's individual resource goals, allocation of resources, budget guidance, performance measures, and a guide for managers to implement these plans.</p> <p>1. Does the organization have such a planning document?</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>The standard states that the plan should also include the allocation of resources in terms of priorities, reactive and proactive investigations, as well as new initiatives in order to ensure the attainment of those goals.</p> <p>2. Does the organization's plan contain such information?</p>					
<p>The standard states (p. 9) that when an investigation is initiated, the organization should prepare, if appropriate, an investigative plan, as soon as possible.</p> <p>3. Does the organization promptly prepare individual case plans for its investigations?</p> <p>The standard states that when investigative plans are prepared, the plans should contain as much of the information on page 9 of the Standards Booklet as deemed necessary.</p> <p>4. Do the individual case plans contain as much of the information contained on page 9 of the Standards as deemed necessary?</p>					
D. <u>EXECUTION</u>					

APPENDIX C

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>This qualitative standard states that the investigative organization conduct investigations in a timely, efficient, thorough and legal manner.</p> <p>1. The guidelines for this standard state (p. 10) that contemporaneous interview notes in a criminal investigation shall be retained at least until final disposition of the case.</p>					
<p>a. Are notes retained until final case disposition?</p> <p>2. The guidelines state (p.10) that two investigators should be present when conducting interviews in situations that are potentially hazardous or compromising.</p> <p>a. Does organizational policy conform to this guideline?</p> <p>3. The guidelines state (p. 10) that requests for witness confidentiality should be considered and properly documented.</p> <p>a. Does organizational policy conform to this guideline?</p> <p>4. The guidelines state (p. 10) that the collection of evidence should be undertaken so as to</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
ensure that all relevant material is obtained, the chain of custody is preserved, and the evidence is admissible in a subsequent proceeding.					
a. Does the organization have appropriate policies and procedures for the gathering and preservation of evidence?					
b. Does a sampling of closed case files show that there is compliance with the policies and procedures for the gathering and preservation of evidence?					
5. The guidelines state (p.10) that investigative results should be documented in a timely, accurate, and complete manner.					
a. Does the organization have policies and procedures for the appropriate documentation of investigative results?					
b. Are investigative results being documented in a timely, accurate and complete manner?					
6. The guidelines state (p. 10) that investigations must be conducted in accordance with all					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
applicable laws, rules, regulations, and consistent with due respect for the rights and privacy of those involved.					
<p>a. Does the organization have clear written guidance on providing rights to interviewees and obtaining waivers?</p> <p>b. Does the organization have policies and procedures regarding the safeguarding of privacy?</p> <p>7. Where applicable, does the organization have policies and procedures to safeguard grand jury information from unauthorized disclosure, as required by Rule 6(e) of the Federal Rules of Criminal Procedure?</p> <p>8. Where applicable, is grand jury information securely stored, properly marked and properly disposed of? (Sample)</p> <p>9. Where applicable, is consensual monitoring conducted in accordance with the procedures established by the applicable Attorney General's guidance?</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>10. Where applicable, does the organization have policies and procedures to assure the proper use of mail covers?</p> <p>11. The guidelines state (p.10) that supervisory reviews of case activities should occur periodically to ensure that cases are progressing in an efficient, effective, thorough, and legal manner.</p> <p>a. Does the organization have policies requiring periodic case reviews?</p> <p>b. Is there documentation of periodic case reviews?</p>					
<p>E. <u>REPORTING</u></p> <p>This qualitative standard is that reports of investigation must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely, and objective.</p> <p>1. Does the organization have policies, procedures, and systems that govern preparation of reports of investigation?</p>					
<p>2. The guidelines to this standard state (p.11) that</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
reports must contain exculpatory evidence and relevant mitigating information when discovered during an administrative proceeding and that exculpatory evidence in a criminal or civil investigation must be brought to the attention of the prosecutor.					
a. Does the organization have policies, procedures, and systems to inform its staff that exculpatory material must be disclosed?					
3. The guidelines state (p.11) that evidence outlined in a report must be supported by documentation in the case file.					
a. Does the organization assure that statements made in reports are supported with documentation? (Sample)					
4. The guidelines state (p.12) that prosecutive reports should not contain opinions, conclusions, or personal views.					
a. Is the policy of the organization consistent with the guideline recommendation?					
5. The guidelines state (p.12) that systemic					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>weaknesses or management problems disclosed in an investigation should be reported to agency officials.</p> <p>a. Does the organization have a policy of reporting systemic weaknesses identified during an investigation to agency officials?</p>					
<p>F. <u>INFORMATION MANAGEMENT</u></p> <p>This qualitative standard for investigative organizations is that investigative data be stored in a manner allowing effective retrieval, cross-referencing, and analysis.</p> <p>The guidelines to this standard state (p.12) that written directives should exist that define the organizational component responsible for record maintenance and the specific procedures to be performed.</p> <p>1. Does the organization have such directives?</p>					
<p>2. The guidelines state (p.13) that the accurate processing of information, essential to an agency's investigative mission, needs an orderly, systematic, and accurate index system.</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>a. Does the organization have such a system?</p> <p>3. The guidelines state (p.13) that written guidance should define the data elements to be recorded in the system and that this guidance should be based on legal requirements and needs, typically to include the names of suspects, and, in some instances, victims, complainants, and witnesses, together with identifying data.</p> <p>a. Does the organization have such written guidance?</p> <p>4. The guidelines state (p.13) that policies, procedures, and instructions for handling and processing complaints should be in place.</p>					
<p>a. Does the organization have policies, procedures, and instructions for handling and processing complaints?</p> <p>5. The guidelines state (p.13) that agencies should adopt procedures to ensure that basic information about</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>complaints is recorded and tracked to final resolution.</p> <p>a. Has the organization adopted procedures to ensure that basic information about complaints is recorded and tracked to final resolution?</p> <p>6. The guidelines state (p.13) that agencies should establish guidelines, including the level of the approving authority, for making a determination to initiate an investigation or to pursue another course of action.</p> <p>a. Has the organization established such guidelines?</p>					
<p>7. The guidelines state (p.13) that management should have certain information available to perform its responsibilities and measure its accomplishments. Various items of workload data, identification data, and investigative results data are listed on pages 13 and 14 to be considered for tracking.</p> <p>a. Does the organization have the policy, procedures, and systems necessary to</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>collect the data needed to assist management in performing its responsibilities and measuring its accomplishments?</p> <p>b. Is there documentary support for the criminal, civil, administrative, and other accomplishments included in the semi-annual reports? (Sample last two semi-annual reports.)</p> <p>8. The guidelines state (p.14) that all investigative activity, both exculpatory and incriminating, should be in the official case file.</p> <p>a. Does organizational policy conform to this guideline?</p>					
<p>9. The guidelines state (p.14) that a case file should be established immediately upon the opening and assignment of an investigation.</p> <p>a. Does organizational policy conform to this guideline?</p>					
<p>10. The guidelines state (p.14) that written directives should specify procedures for: the assignment of case numbers, file organization, filing exhibits and storing evidence, distribution and</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>dissemination of reports, file access record, and record retention.</p> <p>a. Does the organization have such written directives and does a sampling of closed cases confirm compliance with them?</p>					

APPENDIX D

QUALITATIVE ASSESSMENT REVIEW CHECKLIST FOR REVIEW OF INVESTIGATIVE CASE FILES

OIG UNDER
REVIEW _____

Reviewer(s):

Name	Title	Phone No.

Date Completed: _____

Note: This checklist refers to standards established by the *Quality Standards for Investigations* and the MOU between the OIG and the DOJ/FBI. If the MOU standards do not apply to the OIG being reviewed, those questions should be marked "NA" on the checklist.

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QUALITATIVE ASSESSMENT REVIEW Checklist for Review of Investigative Case Files

PURPOSE. This checklist may be used for sampling investigative files to test the compliance with applicable statutory law enforcement standards, MOU provisions, and/or the *Quality Standards for Investigations*.

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
A. <u>COMPLIANCE WITH OIG, DOJ, AND THE FBI MOU</u> (Note: Sections A – H relate specifically to MOU compliance.)					
1. Was the investigator deputized pursuant to a DOJ/FBI Memo of Understanding?					
2. If deputized, was the investigator supervised by an AIGI?					
3. Did the OIG report to DOJ the following information, if applicable?					
a. Arrests?					
b. Searches?					
c. Execution of restraining orders?					
d. Protection of witnesses?					
e. Dangerous surveillance of					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p>investigative subjects?</p> <p>f. Interviews under hazardous circumstances?</p> <p>g. Temporary custody of Federal prisoners?</p> <p>h. Support of under-cover operations?</p> <p>i. Service of subpoenas under hazardous circumstances?</p> <p>j. Assisting in electronic surveillance?</p> <p>k. The Federal prosecutors assigned to investigations that resulted in arrests or searches?</p>					
<p><u>B. GENERAL TRAINING REQUIREMENTS</u></p> <p>1. Did the investigator working this case complete a basic Criminal Investigator Course at the Federal Law Enforcement Training Center or an equivalent training course?</p>					
<p>2. Has the investigator received periodic refresher training in the following areas?</p>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
a. Trial process? b. Federal criminal and civil legal updates? c. Interviewing techniques and policy? d. Laws of arrest, search and seizure? e. Physical conditioning/ defensive tactics?					
<u>C. FIREARMS TRAINING AND QUALIFICATION REQUIREMENTS</u> 1. Has this case agent successfully completed quarterly firearms qualifications? 2. Has this case agent received periodic training concerning the office firearms policy and legal issues in the use of deadly force?					
3. Were the provisions of the Lautenberg Amendment considered prior to recommending this investigator for deputation?					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<u>D. OIG / FBI MUTUAL NOTIFICATION REQUIREMENT</u> 1. <i>Unless the local FBI SAC and the local OIG SAC have made other arrangements, did the OIG notify the FBI in writing within thirty calendar days of OIG investigations if concurrent jurisdiction exists?</i>					
<u>E. CONSULTATION WITH PROSECUTORS</u> 1. Did the case agent consult with a federal prosecutor at an early stage in the investigation, as defined in the MOU?					
<u>F. SENSITIVE TECHNIQUES AND CIRCUMSTANCES REQUIRING JOINT INVESTIGATIONS</u> 1. If a sensitive technique was used in the case, did the OIG work with the FBI and/or another statutory law enforcement agency when using the following techniques:					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
a. Court ordered electronic surveillance?					
b. Undercover operations?					
c. Especially sensitive targets?					
d. Consensual monitoring of conversations in investigations:					
1) of public officials for bribery, conflict of interests, or extortion, relating to the performance of their official duties?					
2) in which the consenting or nonconsenting person is in the custody of the Bureau of Prisons or the United States Marshals Service?					
2. If applicable in this case, did the OIG notify the FBI prior to conducting a sensitive investigation with a Federal law enforcement agency other than the FBI?					
G. <u>USES OF INFORMANTS.</u>					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<p><u>SOURCES AND COOPERATING WITNESSES THAT REQUIRE PROSECUTOR CONCURRENCE</u></p> <p>If informants, sources, or cooperating witnesses were used in this case, did the OIG obtain a Federal prosecutor's concurrence in the following situations:</p> <ol style="list-style-type: none"> 1. When an informant is authorized to participate in criminal activities? 2. When an informant or cooperating witness is a person entitled to claim a Federally recognized legal privilege of confidentiality, such as an attorney, clergyman, or doctor? 					
<ol style="list-style-type: none"> 3. When aggregate payments to a source who could be a witness in a legal proceeding for services and/or expenses exceed \$25,000? 4. When the use of any member of the news media as a source is planned (in such a situation the prior written approval of the Federal prosecutor must be obtained)? 					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<u>H. RELATIONS WITH THE NEWS MEDIA</u> 1. Did the OIG follow DOJ guidelines concerning release of information relating to criminal and civil proceedings? 2. If this was a joint investigation, did the OIG coordinate its press release with the joint agency?					
<u>I. STAFF QUALIFICATIONS</u> 1. Knowledge, Skills, and Abilities –					
a. Does this investigator possess the requisite knowledge, skills, and abilities summarized on page 3 of the Quality Standards booklet? 2. Education/ Experience – a. If newly appointed, does the investigator possess a degree from a four-year college?					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
b. Do those newly appointed investigators who lack a degree from a four-year college have appropriate substitute experience? 3. Character – a. Was a background investigation conducted on this investigator?					
4. Age – a. Does the investigator meet any established minimum and maximum age requirements for entry-level positions?					
J. <u>DUE PROFESSIONAL CARE</u> 1. Does this case file demonstrate the organization took reasonable steps to ensure that all appropriate criminal, civil, contractual, or administrative remedies were considered?					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
2. Were the methods and techniques used in this case appropriate for the circumstances and objectives?					
3. Was this investigation conducted in a fair and impartial manner and with the perseverance necessary to determine the facts?					
4. Was a periodic case review conducted by a supervisor?					
5. Are the report findings and accomplishments adequately documented in the case file?					
6. If applicable, was the subject afforded rights to representation during an interview if he/she is a union member?					
7. Was the chain of custody appropriately maintained for documentary and physical evidence collected in this case?					
8. Where applicable, was a periodic inventory conducted of this agent's accountable property (e.g. credentials, handgun and associated equipment, protective vest, raid jacket, and specialized					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
technical/monitoring equipment assigned)?					
K. <u>PLANNING</u>					
1. Is there a case planning document in this file?					
2. Was it prepared promptly upon opening of the case?					
3. Does the case planning document contain the applicable information from page 9 of the Quality Standards?					
4. If this case involves a potentially hazardous or compromising situation, were two investigators present during the interviews?					
5. If applicable, did the investigator consider, properly afford, and document witness confidentiality?					
6. Was the documentary and physical evidence collected in the case received, identified, and stored in accordance with the organization's policies and procedures?					
7. Were the subject's rights and waivers clearly documented?					
8. If applicable, was grand jury information safeguarded from unauthorized					

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<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
disclosure, as required by Rule 6(e) of the Federal Rules of Criminal Procedure?					
9. Was the federal grand jury information properly marked, securely stored, and properly disposed of?					
10. Where applicable, was consensual monitoring conducted in accordance with the procedures established by the applicable Attorney General's guidance?					
11. If applicable, was the organization's mail cover properly documented?					
12. Were statements made in the final report supported with documentation in the file? (Sample)					
13. If applicable, was the prosecutive report free of opinions, conclusions, or personal views?					
14. If applicable, were the systemic weaknesses identified during the investigation reported to agency officials?					
L. <u>INFORMATION</u>					

APPENDIX D

<u>Review Steps</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>References</u>	<u>Comments</u>
<u>MANAGEMENT</u>					
1. Does the organization possess an orderly, systematic, and accurate index system?					
2. Was investigative data stored in a manner to facilitate effective retrieval, cross referencing, and analysis?					
3. Does a written directive exist to define the organizational component responsible for records maintenance?					
4. Does the organization appropriately assign case numbers, file exhibits, store evidence, distribute and disseminate reports?					
5. Does the organization control access to open and closed files?					

APPENDIX E

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the Office of Inspector General of the (**NAMED AGENCY**) (hereafter OIG), the United States Department of Justice (DOJ), and the Federal Bureau of Investigations (FBI).

I. PURPOSE

The purpose of this MOU is to set forth an agreement under which the Department of Justice will deputize certain OIG investigators as Special Deputy U.S. Marshals, and the OIG and its deputized investigators will adhere to certain specified requirements regarding training and investigations.

II. POLICY AND LEGAL FOUNDATION

DOJ has primary responsibility for enforcement of violations of federal laws by prosecution in the United States district courts. The FBI is charged, in various sections of the United States Code, with investigating violations of federal laws. The OIG has primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility for the prevention and detection of fraud, within the (**NAMED AGENCY**.) The Inspector General Act of 1978, 5 U.S.C., App 3, authorizes the Inspector General to conduct audits and investigations into the programs and operations of the **NAMED AGENCY**.

III. DEPUTATION AGREEMENT

A. For a period of beginning with the signing of this MOU and continuing to _____, the Department of Justice will deputize as Special Deputy U.S. Marshals, pursuant to 28 CFR Section 0.19(a)(3) and 0.112 (4), all Special Agents of the OIG in the "1811 Series" who are designated and are supervised by the Assistant

APPENDIX E

Inspector General for Investigations.¹ Those Special Agents so deputized may, while engaged in the performance of official duties and in addition to any other actions they are authorized to take:

1. make an arrest without a warrant for any federal violation,² if such violation is committed in the presence of the Special Agent, or if the Special Agent has probable cause to believe that the person to be arrested has committed a felony.
2. seek and execute a warrant for an arrest, for the search of premises, or the seizure of evidence, if such warrant is issued under the authority of the United States upon probable cause to believe that a violation has been committed; and
3. carry a firearm.

B. The deputation referred to in Paragraph A is contingent upon the OIG's and the OIG's employees so deputized abiding by the terms of this MOU. The deputation of a Special Agent may be revoked if DOJ or the OIG finds that the Special Agent has acted in contravention of those terms. The deputations of all Special Agents of the OIG may be revoked by DOJ if DOJ finds a pattern of noncompliance.

¹ The Inspector General Act, P.L. 95-452, provided that each Inspector General shall appoint an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations. This MOU contemplates deputation of those employees of the OIG who are supervised primarily by the Assistant Inspector General for Investigations, and are designated in the 1811 Series ("Criminal Investigator") by the Office of Personnel Management Position Classification Standards for Occupational Classification.

² Deputation as a Special Deputy U.S. Marshal does not provide plenary authority to make arrests for nonfederal criminal violations. See Office of Legal Counsel Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation, dated February 21, 1995, "Authority to Pursue Non-Federal Fugitives." Legal authority for federal officers to respond to such offenses generally depends on state law. A federal agency may, however, as a matter of policy permit its officers to intervene in serious criminal conduct that violates state law under certain circumstances. See 2 Op. Off Legal Counsel 47, 52-3 (1978), for a discussion concerning the effect of such policy on the risk of civil liability to the officer.

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C. Between _____ and _____, the OIG shall make a written report to the Criminal Division of DOJ detailing the investigative and prosecutive activities of the persons employed by the OIG who have received special deputations. The reports shall contain information on the occasions³ on which the authority conferred by the deputation of restraining orders, protection of witnesses, dangerous surveillance of investigative subjects, interviews under hazardous circumstances, temporary custody of federal prisoners, support for undercover operations, service of subpoenas under hazardous circumstances, and assisting in electronic surveillance. The reports shall also identify the federal prosecutor assigned to any particular investigation that resulted in an arrest or search.⁴

IV. GENERAL TRAINING REQUIREMENTS

In order to be considered for deputation, each OIG Special Agent must certify completion of the Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center. As an alternative, this training requirement can be satisfied by certification of completion of a comparable course of instruction involving a minimum of 80 hours in enforcement operations, 80 hours of legal training, 40 hours of firearms training, and 40 hours of defensive tactics and physical conditioning. Additionally, the OIG agrees to provide periodic refresher training in the following areas: trial process, federal criminal, and civil legal updates, interviewing techniques and policy, law of arrest, search and seizure, and physical conditioning/defensive tactics. The specifics of these

³ It is agreed that the OIG and DOJ will reach an understanding as to what constitutes an "occasion," so that statistics generated by each agency will be consistent.

⁴ The information required by this paragraph is the information currently required to be filed by those Department of Labor OIG agents in the Office of Labor Racketeering who have blanket deputation authority to investigate labor racketeering offenses, and is used by Criminal Division personnel to assess whether the investigators have complied with the terms and conditions of the

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programs are within the discretion of the OIG, but should conform to standards such as those set at the FBI Training Academy at Quantico, Virginia; the Federal Law Enforcement Training Center in Glynco, Georgia; or any other Federal law enforcement training facility.

V. FIREARMS TRAINING AND RECERTIFICATION REQUIREMENTS

It is imperative that periodic firearms training and recertification in accordance with Department of Justice or Department of Treasury standards be provided to deputize OIG Special Agents. This training should focus on technical proficiency in using the firearm the Special Agent will carry, as well as the policy and legal issues involved in the use of deadly force. The training for this requirement must be met by completion of an appropriate course of training at the Federal Law Enforcement Training Center at Glynco, Georgia, or an equivalent course of instruction. This training will include policy and law concerning the use of firearms, civil liability, retention of firearms and other tactical training, and deadly force policy. In addition to basic firearms training, it is further agreed that the OIG will implement a program of quarterly firearms qualifications by deputized IG Special Agents, which is conducted in accordance with recognized standards. In executing this MOU the OIG agrees to abide by the same use of deadly force policy as the FBI.⁵

deputation agreement.

⁵ The current policy concerning the use of deadly force is contained in Resolution 14 of the Office of Investigative Policies, approved by the Attorney General on October 17, 1995. A copy is attached and shall be considered a part of the MOU. Section I of Resolution 14 provides: "Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person."

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VI. ADHERENCE TO ATTORNEY GENERAL GUIDELINES

OIG Special Agents deputized pursuant to this MOU agree to be governed by applicable sections of the Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Domestic Security/Terrorism Investigations.⁶ OIG Special Agents will continue to follow the November 7, 1983, Attorney General's Memorandum on Procedures for Lawful, Warrantless Interceptions of Verbal Communications.

VII. OIG/FBI MUTUAL NOTIFICATION REQUIREMENT

The Inspector General Act of 1978 directs expeditious reporting to the Attorney General whenever the OIG has reasonable grounds to believe there has been a violation of federal criminal law.⁷ As the primary investigative arm of DOJ, the FBI has jurisdiction in all matters involving fraud against the federal government, and shares jurisdiction with the OIG in the investigation of fraud against the OIG's agency. In such areas of concurrent jurisdiction, the OIG and the FBI agree to promptly notify each other upon the initiation of any criminal investigation, unless the FBI SAC and the OIG Regional Office have made other arrangements that preclude the need for notification in certain categories of cases or in certain situations. Absent exigent⁸ circumstances, "promptly" shall be considered to be within thirty calendar days. Notification by the OIG shall be in writing and addressed to the FBI in the district in which the investigation is being

⁶ These Guidelines, which are applicable to the FBI, were promulgated by then Attorney General Thornburgh on March 21, 1989, and are set out at FBI's Manual of Investigative Operations and Guidelines, Part I, Sections 1-3.

⁷ This requirement is reiterated with greater specificity in the United States Attorneys' Manual (USAM), Sections 9-42.502 and 503.

⁸ In this context, "exigent circumstances" are those when notification could reasonably be expected to endanger life or cause substantial property destruction, cause the concealing, destruction, or alteration of evidence, or otherwise seriously hinder or impair an investigation.

conducted. Notification by the FBI shall be in writing and shall be addressed to the

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appropriate regional office of the OIG. In investigations where allegations arise which are beyond the scope of the OIG's jurisdiction, the OIG will immediately notify the appropriate investigative agency and the appropriate prosecutive authority of the allegations.

VIII. CONSULTATION WITH PROSECUTORS

In criminal investigations, a federal prosecutor must be consulted at an early stage to ensure that the allegations, if proven, would be prosecuted. At a minimum, a federal prosecutor must be consulted before any criminal investigation is conducted beyond verifying the basic facts of the complaint and/or the reliability of the complainant through re-contact of the complainant, public records and indices checks, and subpoenas for telephone toll records. Investigative steps such as the collection of third party records and consensually recorded conversations are beyond what is allowable prior to an initial consultation with a federal prosecutor.⁹

IX. SENSITIVE TECHNIQUES AND CIRCUMSTANCES REQUIRING JOINT INVESTIGATIONS

Certain types of investigations, typically because of the investigative techniques involved, are governed by statute or rules and often are subject to close judicial scrutiny. To ensure strict compliance with applicable requirements and with the Attorney General's Guidelines, cited in Section VI, these OIG investigations must be conducted jointly with the FBI or with another federal law enforcement agency that has statutory law enforcement authority and jurisdiction over the offense. Before an OIG investigation is conducted jointly with a federal law enforcement agency other than the FBI, the OIG shall

⁹ It is recognized that IG subpoenas, which have a civil and criminal purpose, are often used at a preliminary stage of an investigation. Nothing in this MOU is intended to preclude the OIG's continued use of such subpoenas as authorized in section 6(a)(4) of the Inspector General Act, and the reference to telephone toll records in the preceding sentence of the MOU is a specific

notify the FBI. If the FBI believes that it, rather than another federal law enforcement

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agency, should conduct the investigation jointly with the OIG, and the OIG disagrees, the matter shall be referred to the appropriate United States Attorney for resolution. In situations where a joint investigation with the FBI is required, the FBI will make every effort to participate. Normally, resource allocations will be determined at the office level. In unusual situations where an agreement cannot be reached at the field level, the matter will be referred to the appropriate agency's headquarters for resolution. The investigations that must be conducted jointly with the FBI or another statutory federal law enforcement agency are those involving:

A. Court Ordered Electronic Surveillance

Court authorized interceptions of wire, oral, or electronic communications, are among the most intrusive investigative techniques currently available to law enforcement. The rigors of the approval process, expenditures of financial and manpower resources, and the probability of challenges by the defense bar make this technique subject to intense scrutiny. Surreptitious electronic surveillance using closed circuit television presents similar considerations. Any case involving the interception of communications pursuant to 18 U.S.C. Section 2510 et seq., electronic surveillance using closed circuit television in situations where a warrant is required, or any other court ordered electronic surveillance, shall be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdictions over the offense.

B. Undercover Operations

An undercover operation, especially one using a proprietary business entity, is often an invaluable technique in combating white-collar crime, including fraud against the

recognition of this.

government. However, these operations must be monitored closely and carefully. The Criminal Undercover Operations Review Committee (CUORC), comprised of

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Senior Executive Service level managers from the FBI and DOJ, reviews every undercover operation involving sensitive circumstances. The CUORC considers the efficacy as well as the legal and policy implications of every proposal, and each undercover operation which is approved is subject to a management on-site review at regular intervals.

To ensure that the review standards of the CUORC are applied to undercover operations contemplated by the OIG, any undercover operation by the OIG must be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense if it will extend beyond six months in duration or will involve any of the following circumstances:¹⁰

1. authorized criminal activity;
2. the operation of a proprietary business;
3. a substantial risk of harm to any individual;
4. the potential for significant civil, liability; or
5. the targeting of a high-level public official or any public official involved in a systematic pattern of corruption.

- C. Investigations of certain classes of persons typically result in a high level of public and governmental attention. Consequently, an OG investigation that involves any of the following is to be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense:

¹⁰ The five categories are generally defined in the Attorney General's Guidelines on FBI Undercover Operations as operations that may not be approved by the Special Agent in Charge

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1. an investigation of a Member of Congress, a federal judge, a member of the Executive Branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
2. a significant investigation of a public official for bribery, conflict of interest, or extortion relating to the performance of the official's performance of duty;¹¹
3. an investigation of a federal law official acting in his official capacity,¹² except
OIG internal affairs investigations solely of OIG personnel;
4. an investigation of a member of the diplomatic corps of a foreign country; or
5. an investigation of a person who is or has been a member of the Witness Security Program if that fact is known by the OIG or its employees.

D. Consensual Monitoring in Certain Situations

Consensual monitoring of conversations in some circumstances can present unusual problems. Accordingly, if the OIG contemplates an investigation –

1. of a public official for bribery, conflict of interest, or extortion, relating to the

because of fiscal circumstances or sensitive circumstances.

¹¹ "Significant investigations" include investigations such as those involving allegations of a pattern of bribe-taking by a group of public officials acting in concert with one another. They do not include routine investigations into bribery, conflict of interest, or extortion on the part of lower or mid level employees by the OIG and it is recognized that investigations of this type have typically been carried out by the OIG. Nevertheless, investigations of this type, like all investigations, are subject to the notification and consultation requirements of Parts VII and VIII. Such notification is particularly important in cases involving government officials and employees.

¹² The term "acting in his official capacity" is intended to cover misconduct by investigators in the exercise of their authority to investigate violations of law. The term would include such things as taking bribes or other situations in which a criminal investigator misused the powers of his office in an effort to alter the result of an investigation. It would not include such things as making a false claim on a travel voucher, FECA fraud, improperly claiming overtime pay, or other

performance of the official's duties; or

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2. in which the consenting or non-consenting person is in the custody of the Bureau of Prisons or the United States Marshals Service, the investigation must be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense.

X. USES OF INFORMANTS, SOURCES AND COOPERATING WITNESSES THAT REQUIRE PROSECUTOR CONCURRENCE

The use and control of informants, sources, and cooperating witnesses is recognized by the courts as lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, certain guidelines must be applied because the use of informants and cooperating witnesses may involve intrusion into the privacy of individuals, or cooperation with individuals whose reliability and motivation can be open to question. In the following situations, the prior concurrence of a federal prosecutor must be obtained to avoid problems such as entrapment, danger to the public, and abuse of police authority;

- A. when an informant is authorized to participate in criminal activities;
- B. when an informant or cooperating witness is a person entitled to claim a federally recognized legal privilege of confidentiality, such as an attorney, clergyman, or doctor;
- C. when aggregate payments to a source who could be a witness in a legal proceeding for services and/or expenses exceed \$25,000; or
- D. when the use of any member of the news media as a source is planned (and in such a situation the prior written approval of a federal prosecutor must be obtained).

derelictions that can be committed by federal employees who are not law enforcement officials.

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XI. RELATIONS WITH THE NEWS MEDIA

DOJ has prescribed policy and instructions concerning the release of information by employees of DOJ relating to criminal and civil proceedings.¹³ OIG personnel must familiarize themselves with and follow these guidelines while deputized. In addition, in the course of joint investigations, wherever a “news release” would be permitted pursuant to the guidelines noted above, the OIG must coordinate the release with the FBI and the DOJ.

XII. EXISTING MOUS AND BLANKET DEPUTATIONS REMAIN IN FORCE

This MOU does not affect any prior MOU between the DOJ and the OIG of the _____, or any existing blanket deputation of the Special Agents of the OIG of the _____. Should any such prior MOU or blanket deputation expire while this MOU is in effect, the prior MOU or blanket deputation will not be renewed and deputations of the special agents of the OIG will be governed by this MOU.

XIII. NO RIGHTS CREATED BY THIS MOU

This MOU is entered into solely to govern the relationship between the OIG, DOJ and the FBI. It is not intended to, does not, and may not be relied upon to create any procedural or substantive rights enforceable at law by any party in any matter, criminal or civil, nor does it.

¹³ See 28 CFR Section 50.2, and United States Attorneys’ Manual, 107.000.